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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1614

**Introduced by Assembly Members Lempert, Cunneen,
Alquist, Bowen, Figueroa, Kaloogian, Perata, Sweeney, and
Wayne**

June 3, 1997

An act to amend Section 6203 of, and to add Part 32 (commencing with Section 65001) to Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1614, as amended, Lempert. Sales and use tax: California Internet Tax Freedom Act.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or

other consumption in this state of, tangible personal property. That law imposes the sales tax upon “retailers,” as defined, and requires every person desiring to engage in or conduct business as a “seller,” as defined, to obtain a sales tax permit. Existing law provides that every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, that engages in specified activity in this state shall, at the time of sale or at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser. That law provides that “engaged in business in this state” does not include the taking of orders from customers in this state through a computer telecommunications network, as provided, and provides that these provisions shall become inoperative, as specified.

This bill would modify that inoperative date and make technical, clarifying changes to those provisions, as provided.

Existing law imposes various state income, franchise, property, and excise taxes and various user, regulatory, and franchise fees in connection with activity or property within the jurisdiction of this state. Existing law authorizes counties, cities, and other local agencies to impose various taxes and fees in connection with activity or property within those jurisdictions.

This bill would enact the “California Internet Tax Freedom Act” to prohibit, with specified exceptions, the imposition, assessment, or attempt to collect any of the following: a tax on Internet access, Online Computer Services, or the use of Internet access or any Online Computer Services; a bit or bandwidth tax; or any discriminatory tax on Online Computer Services or Internet access. The bill would make specified legislative findings and declarations in connection with that prohibition.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 6203 of the Revenue and Taxation Code is amended to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) “Retailer engaged in business in this state” as used in this section and Section 6202 means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) Any retailer soliciting orders for tangible personal property by means of a telecommunication or television

1 shopping system (which utilizes toll free numbers) which
2 is intended by the retailer to be broadcast by cable
3 television or other means of broadcasting, to consumers
4 located in this state.

5 (5) (A) Any retailer soliciting orders for tangible
6 personal property by mail if the solicitations are
7 substantial and recurring and if the retailer benefits from
8 any banking, financing, debt collection,
9 telecommunication, or marketing activities occurring in
10 this state or benefits from the location in this state of
11 authorized installation, servicing, or repair facilities.

12 (B) This paragraph shall become operative upon the
13 enactment of any congressional act that authorizes states
14 to compel the collection of state sales and use taxes by
15 out-of-state retailers.

16 (6) Any retailer having a franchisee or licensee
17 operating under its trade name if the franchisee or
18 licensee is required to collect the tax under this section.

19 (7) Notwithstanding Section 7262, a retailer specified
20 in paragraph (4), (5), or (6) above, and not specified in
21 paragraph (1), (2), or (3) above, is a “retailer engaged in
22 business in this state” for the purposes of this part and Part
23 1.5 (commencing with Section 7200) only.

24 (d) (1) For purposes of this section, “engaged in
25 business in this state” does not include the taking of orders
26 from customers in this state through a computer
27 telecommunications network located in this state which
28 is not directly or indirectly owned by the retailer when
29 the orders result from the electronic display of products
30 on that same network. The exclusion provided by this
31 subdivision shall apply only to a computer
32 telecommunications network that consists substantially
33 of on-line communications services other than the
34 displaying and taking of orders for products.

35 (2) This subdivision shall become inoperative upon
36 the operative date of provisions of a congressional act that
37 authorize states to compel the collection of state sales and
38 use taxes by out-of-state retailers.

39 (e) Except as provided in this subdivision, a retailer is
40 not a “retailer engaged in business in this state” under

paragraph (2) of subdivision (c) if that retailer's sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars (\$10,000) of gross income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a "retailer engaged in business in this state," and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(f) The Legislature finds and declares that the deletion of language by the act adding this subdivision that was contained in paragraphs (5) and (8) of subdivision (c) is intended to codify the holdings of recent court cases.

SEC. 2. Part 32 (commencing with Section 65001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 32. CALIFORNIA INTERNET TAX
FREEDOM ACT

65001. This part shall be known and may be cited as the "California Internet Tax Freedom Act."

65002. The Legislature finds and declares all of the following:

(a) As a massive global network spanning not only state but international borders, the Internet is inherently

1 a matter of interstate and foreign commerce within the
2 jurisdiction of the United States Congress under Section
3 8 of Article I of the United States Constitution.

4 (b) Even within the United States, the Internet does
5 not respect state lines and operates independently of
6 state boundaries. Addresses on the Internet are designed
7 to be geographically indifferent. Internet transmissions
8 are insensitive to physical distance and can have multiple
9 geographical addresses.

10 (c) The electronic marketplace of services, products,
11 and ideas available through the Internet or Online
12 Computer Services can be especially beneficial to senior
13 citizens, the physically challenged, citizens in rural areas,
14 and small businesses. It also offers a variety of uses and
15 benefits for educational institutions and charitable
16 organizations.

17 (d) Taxes imposed on Internet access or Online
18 Computer Services by state and local governments could
19 subject consumers, businesses, and other users engaged in
20 interstate and foreign commerce to multiple, confusing,
21 and burdensome taxation, could restrict the growth and
22 continued technological maturation of the Internet itself,
23 and could call into question the continued viability of this
24 dynamic medium. This could threaten Internet access for
25 Californians at home, at work, and at school, and is
26 counterproductive to established state policies, such as
27 the promotion of telecommuting.

28 (e) Companies providing Internet access are making
29 substantial capital investments in new plants and
30 equipment. Multiple and excessive taxation could place
31 that investment at risk, and discourage the expansion of
32 investment in Internet access equipment, thereby
33 placing California at a long-term competitive
34 disadvantage.

35 (f) Services provided by local governments are
36 important and valuable to both consumers and
37 businesses, and this bill is not intended to interfere with
38 existing sources of revenue that provide funding for local
39 government services. This act is intended to impose a
40 moratorium on new taxes imposed on Internet access and

1 Online Computer Services, as well as the discriminatory
2 application of existing or new taxes, as defined herein, to
3 Internet access or Online Computer Services.

4 (g) A uniform and coherent national policy
5 concerning national and subnational taxation of the
6 Internet, in a manner which does not unreasonably
7 burden interstate and foreign commerce, may be
8 developed by the Congress of the United States, acting
9 pursuant to the powers granted to it by clause 3 of Section
10 8 of Article I of the United States Constitution. Until that
11 national policy is developed, and determined by the
12 Legislature to be in the best interest of the people of the
13 State of California, a limited preemption of local taxing
14 authority of the Internet and Online Computer Services
15 is appropriate.

16 (h) The Legislature finds and declares that currently
17 the state is not imposing any discriminatory taxes or fees,
18 within the meaning of this act, on Internet access or
19 Online Computer Services. It is the intent of this
20 Legislature that no existing or future state taxes or state
21 fees be imposed by the state in a discriminatory manner
22 upon Internet access or Online Computer Services. This
23 statement of legislative intent is meant to place the
24 greatest possible barrier to the creation of discriminatory
25 taxes or fees upon this Legislature and all future
26 Legislatures.

27 (i) For these reasons, the Legislature finds that,
28 subject to certain exceptions designed to protect existing
29 local government revenue, preemption of local
30 government authority to levy taxes on ~~companies~~
31 ~~offering~~ Online Computer Services and access to the
32 Internet is a matter of statewide concern.

33 65003. For purposes of this part:

34 (a) "Internet" means the global information system
35 that is logically linked together by a globally unique
36 address space based on the Internet Protocol (IP), or its
37 subsequent extensions; and is able to support
38 communications using the Transmission Control
39 Protocol/Internet Protocol (TCP/IP) suite, or its
40 subsequent extensions, or other IP-compatible protocols;

1 and provides, uses, or makes accessible, either publicly or
2 privately, high level services layered on the
3 communications and related infrastructure described
4 herein.

5 (b) “Online Computer Services” means the offering
6 or provision of information, information processing, and
7 products or services to a user via the Internet, whether or
8 not they are offered as part of a package of services that
9 are combined with Internet access and offered to the user
10 for a single price, or provided and billed separately.
11 “Online Computer Services” does not include telephone
12 service *or telecommunications services* to the extent that
13 the amounts paid for those services are taxed under
14 Section 4251 of Title 26 of the United States Code.

15 (c) (1) “Internet access” means the offering or
16 provision of the storage, computer processing, and
17 transmission of information that enables the user to make
18 use of the resources found via the Internet.

19 “Internet access” does not include telephone service *or*
20 *telecommunications services* to the extent that the
21 amounts paid for those services are taxed under Section
22 4251 of Title 26 of the United States Code.

23 (2) A provider of Online Computer Services or
24 Internet access shall not be deemed as also meeting the
25 provisions of Section 234 of the Public Utilities Code
26 strictly by virtue of providing Online Computer Services
27 or Internet access.

28 (d) “Franchise fee” means the fee imposed pursuant
29 to Sections 6001 and 6231 of the Public Utilities Code, or
30 Section 53066 of the Government Code.

31 (e) “Discriminatory” means a tax levied on Online
32 Computer Services or Internet access that is either of the
33 following:

34 (1) At a rate higher than that imposed on other
35 businesses or services generally.

36 (2) Applicable to the taxpayer solely by virtue of the
37 offering of or the use of Online Computer Services or
38 Internet access.

39 (f) “Bit tax” means any transactional tax imposed on
40 or measured by the amount of digital information

1 transmitted electronically, or any transactional tax
2 imposed on or measured according to any of the
3 technological or operating characteristics of the Internet,
4 *but does not include taxes imposed on the provision of*
5 *telecommunications services.*

6 (g) “Bandwidth tax” means any transactional tax
7 imposed on or measured by the physical capacity of an
8 available signal to transmit information electronically *or*
9 *by fiber optics.*

10 65004. (a) Except as provided in subdivision (b), no
11 city, county, city and county, or special district may
12 impose, assess, or attempt to collect any of the following:

13 (1) A tax on Internet access, Online Computer
14 Services, or the use of Internet access or any Online
15 Computer Services.

16 (2) A bit tax or bandwidth tax.

17 (3) Any discriminatory tax on Online Computer
18 Services or Internet access.

19 (b) The prohibition in subdivision (a) against the
20 imposition of taxes or fees shall not apply to either of the
21 following:

22 (1) Any existing tax, including any sales and use tax,
23 utility user tax, or franchise fee, that is imposed or
24 assessed in a uniform and nondiscriminatory manner
25 without regard to whether the activities or transactions
26 taxed are conducted through the use of the Internet,
27 Internet access, or Online Computer Services.

28 (2) Any franchise fee on online computer services
29 delivered over a cable television system, unless the
30 Federal Communications Commission or a court of
31 competent jurisdiction finds that those services are not
32 cable services, as defined in Section 522(6) of Title 47 of
33 the United States Code. The operation of this paragraph
34 may be suspended by contract between a cable television
35 authority and a cable television operator.

36 (c) This part shall become inoperative ~~40~~ *five* years
37 from the effective date of the act adding this part.

38 SEC. 3. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or
40 safety within the meaning of Article IV of the

1 Constitution and shall go into immediate effect. The facts
2 constituting the necessity are:
3 In order to maintain the continued viability of the
4 Internet and maintain a uniform policy of taxation
5 relating to Internet activity, it is necessary that this act
6 take effect immediately.

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